IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6139 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : YES

@

MAYABEN LAXMINARAYAN VYAS W/O LAXMINARAYAN VYAS

Versus

AHMEDABAD DISTRICT CO-OP. BANKLTD.

Appearance:

1. Special Civil Application No. 6139 of 2002

MR KS JHAVERI for Petitioner No. 1-13

MR TUSHAR MEHTA for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 06/09/2002

ORAL JUDGEMENT

1. The short facts of the case are that the petitioners, who are members of respondent No.2 Society

have approached this Court against the order dated 3-4-2002 passed by the Gujarat State Cooperative Tribunal, Ahmedabad in Appeal No.17/1996, whereby the Tribunal has dismissed the application for being impleaded as party in the Appeal preferred by custodian of respondent No.2 Society.

2. It is the case of the petitioners that the respondent Bank had preferred lavad suit No.1980 of 1992 before the Registrar 's Board of Nominees for recovering the amount of the loan from respondent No.2 society. It is also the case of the petitioners that the ex-office bearers of the society have mismanaged with the funds of the society and when the suit came to be filed, the suit was not properly defended and as a result thereof, the learned Nominee proceeded ex-parte and the award has been passed. The custodian of respondent No.2 Society preferred appeal against the ex-parte judgement and award of the learned Nominee being appeal No.17/1996 before the Gujarat State Cooperative Tribunal and the said appeal is admitted and is pending.

3. Pending the said appeal, the petitioner preferred application Ex.46 for being impleaded as party, contending that they are affected by the outcome of the proceedings of the appeal. The said application is rejected by the Tribunal on the ground that each individual member has no right to approach to be impleaded as party and, therefore, the application is rejected. The said order is under challenge in this petition.

4. As regards the status and the locus of the members of the Housing Coop. Society, more particularly in a matter of recovery of money from the property of the societies which are under the possession and in occupation of the concerned members, this Court in the case of "Sureshbia Babubhai Sunara Vs. Ahmedabad District Co-op. Bank Ltd.", in SCA No.10725/2001 has observed at para 10 as under:

> "10. So far as the contention of Mr.Vakharia that there is no privity of contract between the bank and the members of the society are concerned, prima facie, it appears that in every cooperative society the members are not the third party to any litigation of the society, more particularly, when it is for the purpose of recovery of amount from the property of the society which is given by the society to its members for utilisation of their leasehold rights

> or otherwise. The society if remains lethargic or does not defend the rights properly it can not be said that the members have just to act like silent spectators of the functioning of inefficient or dummy office bearers and have to accept or abide by the order though they have remedy to recourse available under law. In a given case, if the organiser or developer for the reasons best known to them or some officer bearers of the society for the reasons best known to them or some office hearers of the society for the reasons best known to them may not prefer appeal against the award of the Nominee, but if the members of the society who are going to be directly affected by the award of the Nominee, if desire, they have right to prefer appeal on the ground that they are directly aggrieved by the award of the Nominee. In a Housing Cooperative Society, when the members have been allowed to occupy the property and on account of some debt outstanding against the society which is to be recovered from the property which is under the occupation of the members, it cannot be said that the members are not affected or aggrieved by the award of the Nominee. Under the circumstances, I am of the prima facie view that the members of the society can be said to have been aggrieved by the award of the Nominee for the recovery of the amount from the property of the society which is under occupation of the members concerned."

5. The learned Counsel for the petitioners as well as the respondents have mainly raised the contentions as were raised on behalf of the petitioners as well as the respondents in the proceedings of SCA No.10725/2001. I am of the view that it is not necessary for this Court to elaborately record the reasons, more particularly when the matter is already covered by the decision of this Court in the aforesaid case. Suffice to say that as per the ratio laid down by this Court in the aforesaid judgement, the members of the Society can be said to have been aggrieved by the award of the learned Nominee of recovery of the amount from the property of the Society which is under the occupation of the members concerned. The aforesaid aspect is not at all properly considered by the Tribunal and in view of the same, the order of the Tribunal deserves to be quashed and set aside since the petitioners who are affected by the outcome of the appeal are not allowed to be joined as party and it is further required to be clarified that the petitioners will have right to be impleaded as party in the proceedings of the

appeal and the appeal may be decided thereafter.

6. In view of the above discussion, the order dated 3-4-2002 passed by the Gujarat State Cooperative Tribunal below Ex. No.46 in appeal No.17/1996 is quashed and set aside and the application below Ex.46 is allowed with the directions that the petitioners are permitted to be impleaded as party in the proceedings of appeal No.17/1996 and the Tribunal is further directed to decide the appeal after giving opportunity of hearing to the petitioners and to pass the order in accordance with law. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs.

6-9-2002 (Jayant Patel, J.)

vinod